

The gender lens to the UN Guiding Principles on Business and Human Rights

Multi-stakeholder Consultation for Latin America, 21-22 February 2019, Mexico City

SUMMARY

Opening – Round Table : *Rosa Maria Caniupil Huaiquiñir*, Mapuche Lider; ; *Emilio Guerra*, Local Global Compact Network-México; *Aura Gutierrez*, Human Rights Commission for Mexico City; *Laura Treviño*, National Human Rights Commission (CNDH)

The objectives of the event are: (i) Increase awareness of the gender perspective in the Guiding Principles and in the business activities;

(ii) Create synergies between the great diversity of participants;

(iii) Empower women who have suffered abuses in the framework of company activities, among others.

Panellist commented that there is no significant participation of indigenous peoples in the framework of economic development projects operating in/surrounding indigenous land. In addition, indigenous women have been persecuted for defending their rights in the business context.

Other panellist emphasized that companies can also have positive impacts on society. Some companies in Mexico are already implementing programs to support women and there are more and more women at the highest decision-making levels within the companies, regardless of the sector. However, the wage gap is still a problem in the region. Women's wages are usually 22% lower than men's wages in Mexico.

Panellists highlighted that the role of the national or regional human rights institutions is to raise awareness regarding obstacles that women face in the world of work, not only regarding the right to employment, the wage gap, the dual work/domestic role, discrimination due to pregnancy, but also the right to health and a healthy environment. Human rights institutions can advocate for the adoption and implementation of gender equality policies, such as conciliation policies to change paradigms of maternity and paternity. These human rights institutions also play important roles in prevention and remedy. For example, human rights institutions can receive and investigate complaints related to gendered impacts of business activities.

For example, the National Human Rights Commission of Mexico (CNDH), at the level of prevention, encourages companies to know and apply the UN Guiding Principles on Business

and Human Rights (UNGPs), looking not only at women within the company but also at women users of products or services, and at women in communities impacted by company activities. The CNDH promotes useful tools for companies, such as a platform with questions that companies can answer, privately if they prefer, about wage commitments, compliance with ODSs, among other things. These tools offer an assessment of what they have yet to comply with. The CNDH provides advice to ensure that companies do not disproportionately affect women or that prejudices against women are generated, for example, supporting the design of internal policies on gender and the establishment of grievances mechanisms at the operational level which address barriers faced by women. In addition, the CNDH has tools for advocacy in public policies, through its recommendations for non-repetition and the alignment of activities with international standards.

Intersectional dimension of discrimination against women in Latin America; women's working conditions and the impact of the economy of care

Participants highlighted that women workers are particularly represented in four important sectors: domestic work; agriculture; textile. Most of agricultural workers are indigenous in Mexico and they suffer another layer of inequality and discrimination. They suffer from sexual violence and diseases due to the use of pesticides without adequate protection, and several have been dispossessed of their land by companies, who are then forced to work for them as their sole source of income. Migrant women workers, also suffer additional layers of discrimination. A lack of solidarity within the trade union sector was also underlined, most trade unions are made up of men, and women are discriminated inside the unions. The situation in the *maquilas* in Mexico is exemplified for their impacts on women and girls. In the *maquilas*, there are serious and invisible levels of exploitation. Most of women workers work in the informal sector; they do not have adequate equipment; they work under lock; they are abused by staff and co-workers; they generally work 12- or 13-hour a day and do not earn sufficient wages for a dignified life.

It was also highlighted that informal economy is disproportionately borne by women in the region. In Honduras, there are efforts to regularize informal work. However, the regularization of women workers does not give them access to social security or other related benefits. The economic benefits associated with formality would not exist and this added to the barriers already faced by women, such as wage gaps and disproportionate care work. Finally, it is mentioned that the areas of corporate social responsibility of the private sector should not be receiving tax benefits.

Regarding the role of care, it is mentioned that rural, indigenous, and afro-descendant women who do not live in urban centres live in a precarious situation regarding care. Rural women have up to 3 or 4 more caregiving burdens. One of the reasons is the lack of water caused by the diversion of water by business and the time spent working in orchards, with animals, and performing domestic work in areas where there is no electricity. The burden of care affects women's economic autonomy which, in turn, affects women's participation in community spaces and their access to decision-making spaces. On top of that, the particular land needs of indigenous and afro-descendant women are not taken into account. Consequently, their spiritual, cultural and health rights are hindered. In addition, within companies, they often occupy the lowest positions.

The Global Compact and UN Women's Principles for Women's Empowerment encourage private initiatives to establish concrete and measurable commitments; promoting greater representation of women in decision-making positions; developing flexible work schemes; and encouraging more companies to respect these principles.

Unpack the impact of business operations on women's equality and empowerment in trade, investment and economic reforms

During the discussions, participants underscored that the development of global and regional trade and financial regimes based on neoliberalism; the decline of welfare state; the privatization of public service; international monetary and financial institutions have not contributed to reducing gender inequality in the region and have impacted women differently. In this context, enterprises have a role to play, as they influence policies, economies, norms and legal, social and cultural practices. Companies could use their role to actively promote equality inside and outside the workplace.

The discussions also pointed that the gender equality approach to which companies are committed often does not take into account the women who live in the area of influence of their activities. They have even fewer commitments to remedy the particular effects these activities may have on this population group. Hence the importance of improving human rights and gender due diligence processes throughout the production process, including the supply chain. Conducting human rights due diligence with a gender perspective requires companies to adopt a holistic approach to their operating environments, identifying, preventing, mitigating and accounting for the ways in which their actions or omissions may differently affect men, women and people who do not comply with gender norms. This means that companies must go beyond minimum standards to respect human rights and also consider ways in which they could use their leverage in specific situations to promote human rights by identifying, addressing and helping to dismantle structural forms of inequality.

Gender –sensitive trade and investment

According to the discussions, there is a lack of commitment and incorporation of human rights in trade and investment agreements, and this is reflected in the lack of attention at gender issues in these agreements and the possibility of their having differentiated impacts on women and men. For example, this is demonstrated in the impacts of trade agreements that have had on rural women or in the detriment of access to medicines or health services, which have impacted more women than men, since women have different needs and different sexual and reproductive rights.

The differentiated impact that business activities have on women's equality is also related to women's right to land. In many countries in the region, women's rights as landowners are not recognized in practice. This exacerbates discrimination and inequality in processes such as consultations, land lease and acquisitions, displacement and resettlement negotiations, or compensation agreements, as women are de facto excluded or marginalized from these

processes and negotiations, bearing in mind that women often have a central role in the management and use of land and water in rural areas.

Privatization of public services

The participants emphasized that the privatization of public services such as education, health and drinking water has impacted disproportionately women and girls in terms of access to these services (e.g. water cuts, lack of access to care services such as childcare facilities, lack of access to basic health services). The decision making process regarding the privatisation of a public service should require a human rights and gender impact assessment. This should be included in National Action Plans (NAPs).

Discussions pointed that fiscal policies should be based on sound gender analysis. Direct taxes affect women differently than men, because women mostly earn less, tend to enter and leave the labour market at different stages of their lives, and provide unpaid labour and care work at home, in family businesses and in the community. Women disproportionately bear the burden of unpaid care work. This affects their ability to participate in paid employment, pay taxes and benefit from social security benefits and public services provided through the tax system.

Tax Justice

It was mentioned that a trend towards an increase of tax contributions by extractive companies grows, but since there is no gender perspective on issues of tax and redistributive justice, the public expenditure made from these revenues has not been used to reduce the gender gap or compensate for the greater impacts that extractive activities have on women, and the same is true for companies' social spending.

Many developing countries have established special provisions for large enterprises, both internal and external, that include very generous tax incentives. It is difficult to measure the effect these policies have on women. The creation of special economic zones for intensive manufacturing is reportedly often accompanied not only by tax benefits, but also limits trade union action and freedom of association, in addition to the weakened application of labour regulations, which means that working conditions are precarious and dangerous. In addition, special economic zones can have a discouraging effect on small national enterprises and thus have an impact on incomes. The immediate consequence of the economic zone is the loss of public revenue available for public expenditure, which is likely to affect women and their children the most.

Last but not least, participants highlighted the problem of access to remedy for women and human rights defenders affected by business activities. Barriers to access to justice and remedies include the lack of income to obtain legal advice, the difficulty of access justice for geographical and linguistic reasons, the lack of available mechanisms to hold companies accountable and to take responsibility for remediation of the adverse impacts. On top of this, it has been shown that women and girls may be particularly marginalized in seeking access to remedy due to additional underlying structural discrimination; discrimination on women who unionize or defend their land rights, and many women cannot go to court because they are 100% responsible of childcare. In the area of non-judicial remedies in particular, grievance mechanisms at the operational level have been challenged for failing to respond adequately to cases of sexual and gender-based violence. For this reason, in any UNGP implementation

exercise, it would be important to incorporate a gender perspective when thinking about how to make access to remedy, making sure that the needs/barriers faced by women affected by business activities are addressed.

Meaningful participation of women in the related decision-making process with businesses, with specific attention to the vulnerabilities of women's groups

Women's participation in decision-making: There is a consensus among participants that there is a limited insertion of women in political and public lives in the Latin American region. Historically, there is a dichotomy: man/public space and woman/private space. However, women's political participation is fundamental. Since formal equality recognition is not enough, States must adopt positive measures or so-called affirmative actions. The establishment of quotas is an affirmative action measure that countries of the region have used to encourage the participation of women, especially in elected positions. Between 1991 and 2015, 17 countries in the region adopted legislations with some form of quota. However, the insufficiency of quotas has been noted. Other more efficient measures could be alternation and parity. There are about six countries in the region that have included some form of parity.

The few women who make it to senior or representative positions reportedly face additional problems. For example, a woman deputy is usually relegated to certain topics, she is not allowed to participate in Congress in commissions such as mining, but is relegated to aspects related to women, such as family commissions.

Decision-making processes: At the State level, the relevant decision-making processes in relation to public investment and trade rules and policies do not involve women, as emphasized by participants. According to ECLAC's Gender Equality Observatory in Latin America, there is under-representation of women in all spheres of the State: Ministers in central government, legislative body, and regional or local powers. Another key area is the process of drawing up National Action Plans. In Latin America, there are few countries that have a NAP (Colombia and Chile), and those who have do not incorporate a gender perspective.

In terms of decision-making on specific business activities, those of the extractive sector are fundamental in the Latin American region. Decisions on these projects take place within the framework of environmental licensing and/or consultation processes with indigenous peoples/communities carried out by the State. However, women perspective and support for women representation have so far been absent in this decision-making processes according to the participants.

The legislation and public policies in the region have serious deficiencies, widely documented, such as public participation, consultation of indigenous peoples, transparency and participation for environmental impact assessments (EIA) and transparency for operation/extractive exploitation licenses. In addition to these problems, there is a lack of a gender focus. It was emphasized that it is fundamental to incorporate a gender perspective because:

- (a) women are impacted in a differentiated way by the extractive activities. For example, the installation of a megaproject in the surrounding of their communities may imply an increase in violence both by external actors (security, public force) and by internal actors (intra-community/intra-family). In terms of economic autonomy, it can lead to an increase of unpaid work, such as when, due to water scarcity or pollution, women

spend more time collecting the water they need for domestic tasks, which tends to fall on them.

(b) Women face particular obstacles to participate in these spaces; including due to language, distance, house care responsibility, lack of leadership, or recognition of their contributions in the processes. Land tenure is a key underlying issue that aggravates their low participation. Women have had less access to land as owners, which excludes them from decision-making spaces.

As for the private sector, women are not usually part of corporate governance; therefore, it is suggested to include incentives for women to be promoted to managerial positions. Trade unions are over represented by men, and women are often not included in decision-making within the organization. The same is true for some indigenous decision-maker authorities.

Women in vulnerable situations: For some women it is more difficult to meaningfully participation due to historical discrimination and exclusion they have suffered:

a. Indigenous women. For example, in the consultation processes carried out by the State, indigenous women are not taken into account, there is no equal participation of men and women. If women go to the consultation, they are relegated to take care of care tasks (preparing lunch, etc.).

b. Women defenders. Women who dedicate themselves to defending their rights (especially land, territory and natural resources) have faced a lot of problems. Cases were mentioned of murders of women defenders, such as Berta Cáceres, in Honduras, who defended her community against the Agua Zarca project. Criminalization is a very common in the region that impacts women especially and weakens their struggles. In addition, it can expose them to sexual violence (for example, in Guatemala 74% of women in detention suffer sexual violence).

c. Rural women. Their situation is often invisible.

Women's experience in accessing remedy: judicial and non-judicial mechanisms

The discussions pointed when cases of business-related human rights are prosecuted, those who carry out the investigation are men. In addition, land is mostly owned by men, which causes addition obstacles for women to get access to remedy on land-related issues. Judges do not generally incorporate a gender perspective in their rulings and policies on the administration of justice have gender biases. Therefore, women are re-victimized. The only compensation is monetary, there is no protection. In addition, impunity rates are very high in the region and justice would favour big business.

The protection mechanisms for women human rights defenders have also had deficiencies, such as in terms of statistics and follow-up and implementation. The IACHR's precautionary measures would not change anything internally according to participants. The police escorts provided do not protect them, therefore women human rights defenders are forced to leave the country.

It is suggested that governments create an independent commission where women feel free to complain in order to achieve an effective remedy.

It was stressed that there is very little internal regulation within the businesses, including for addressing the issue of harassment at the workplace. Companies should be forced to adopt policies on gender and harassment. Companies should have grievances mechanisms at the operational level that have an adequate and composed with dedicated professionals.

Integrating a gender perspective into human rights due diligence and impact assessments

Human rights due diligence in the region remains an issue to be improved, as highlighted in the discussions. Companies highlight having code of conduct and ethical policies, as well as complaint channels, such as mailboxes. Some businesses have also in place training processes for employees on corporate on human rights policy to be applied internally and externally. However, it was emphasized that more should be done to ensure that there is more awareness regarding human rights and related- company policies, especially at the highest levels.

Sub thematic gender cafe: land and climate changed-related impacts on women

In the region, there would not be adequate due diligence processes for mega-projects activities, therefore business activities impacts are aggravated in the territories, mainly with regard to water, food and health. These impacts have differentiated repercussions on women due to their activities in these areas. . The business- impacts on women related to the environment have forced women to flee due to the environmental impacts. It is necessary to promote processes of access to information and participation, particularly for women.

Sub thematic gender cafe Gender: Policy coherence: Incorporation of a gender perspective into business-related policies and laws, including National Action Plans

In Latin America, policy coherence is hindered by different government's levels of decisions making. As a consequence, companies reported that they do not have clear rules of the game. The authorities in charge of the development or implementation of NAPs usually lack adequate weight or legitimacy. Therefore, other authorities do not respond to their calls which has an impact on policy coherence. It is emphasized that NAPS must be accompanied by an adequate budget to achieve real change. Rights holders and experts should also be included, which help build/regain trust. Transparency and follow up are key to this.

Good practices in countries:

- In Mexico, the National Women's Institute has made progress by certifying companies on gender and human rights. In addition, this certification favors them for state bids.
- In Peru, there is the seal of "Safe Company" for compliance with human rights standards, which generates trust between the company and citizens.

Sub thematic gender café: Gender analysis of the situation of women in conflict and post-conflict contexts, including indigenous women, human rights defenders and girls.

Discussions emphasized that indigenous and rural women, human rights defenders and girls suffer disproportionate impacts caused by monoculture, hydroelectric and mining projects, especially in conflict and post-conflict countries, where state officials act as part of criminal networks. In these contexts, businesses benefit from fiscal and political privileges and social

protest are repressed. Mega-project areas are being militarized, further aggravating the security situation for women. In addition constitutional guarantees are sometimes suspended, which leads to military, police and paramilitary occupation of their territories; arbitrary persecution; and detentions; sexual violence; trafficking of persons, and extrajudicial executions among others.

Therefore, regulations should be foreseen at the national and international levels on the following topics:

- Prior, free and informed consultation of indigenous communities and peoples, respecting their own forms of consultation and decision-making, with a gender perspective.
- Provide, through efficient and effective mechanisms, due protection to women against the high risk of violence, torture and sexual trafficking of indigenous women, women human rights defenders and girls, especially in conflict and post-conflict contexts.
- Provide for the respect and strengthening of community organizations, particularly for protection and security mechanisms, with emphasis on women needs.
- Identify state institutions and budget to implement measures for the prevention, investigation and punishment of human rights violations derived from business activity.
- Include ethical standards and standards of excellence within companies for the recruitment of private security services companies, in conflict and post-conflict contexts, due to their possible links with military and paramilitary bodies involved in serious human rights violations.
- Regarding remedy, mechanisms should be contemplated for the protection and care of orphaned children derived from serious violations of the human rights of communities, related to occupation of territories, evictions or repression.
- Create specific, comprehensive programme for children and women victims of trafficking in conflict and post-conflict contexts, generated around business activities and police, military or paramilitary presence in the territories.
- Establish psycho-social support programmes.